IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3429 OF 2006

Batliboi Limited. .. .. Petitioner
V/s.
State of Maharshtra & ors. .. Respondents

Mr.A.S.Khandeparkar i/by M/s.Khaitan & Jayakar for petitioner.

Mr.S.R.Nargolkar, AGP for res.Nos.1 & 3.

Mr.A.V.Anturkar with Mr.Ganesh Gole for res.No.2.

Mr.S.D.Bhosale for res.No.4.

Respondent No.5 is served.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 19th July 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. This petition is filed by a Company registered under the Companies Act. It is owning a property at Mahabaleshwar bearing C.T. Survey Nos.94, 95 and 96. There are many structures standing on this property but the one nearest to the road is a bungalow by name Non Pariel Veu. It is at the distance of 30.24 meters from the road which is of the width of 7 meters. Beyond the road at a distance of 6 meters a Community Centre of the size of 15.21 meters x 8.33 meters is being

constructed by the Mahabaleshwar Municipal Council. The petitioner is objecting to it and, therefore, the present petition is filed by contending that the petitioner's structures are heritage structures and that there is a violation of law to protect the heritage structures.

3. Mr.Khandeparkar, learned Counsel appearing for the petitioner, drew our attention to the Draft Regulations for conservation of buildings / precincts for the Mahabaleshwar Municipal Council area and particularly Clause 6.1 thereof. This clause lays down that no permission for development, alteration, modification etc. shall be granted to any person in respect of any heritage precincts or the listed buildings except with the approval of the Heritage Conservation Committee. His submission is that the construction carried out by the Mahabaleshwar Municipal Council is within the heritage precincts and, therefore, it should not be permitted. He further drew our attention to the definition of "Heritage precinct" under Section 2 (13C) of the Maharashtra Regional And Town Planning Act, 1966. It defines the heritage precinct as an area comprising heritage building or buildings and precincts thereof or related places. Therefore,

to be the heritage precinct, the disputed construction has to be within the precincts of the heritage building.

4. There is no dispute that the petitioner's structures are heritage structures. However, the aforesaid definition does not take us any where. The Law Lexicon refers to a ruling of the Madras High Court in **Re K.V.V. Sarma reported in AIR 1953 Madras 269** in the context of Section 2(m) of the Factories Act, 1948 and it states that the term "precincts" is usually understood as a space enclosed by walls. That sounds to reasons. A concept of precincts cannot be extended beyond the four walls of the property and certainly not in the present case. This is because the petitioner's structure on the road side itself is at a distance of 33.24 meters from the main road. Surely, one cannot extend the idea of precincts beyond the boundary of this property which is at that distance from this bungalow.

5. That apart the two structures are Grade-II and Grade-III structures. As far as Grade-II and Grade III structure is concerned, alterations and additions are permissible therein also with appropriate regulations. The disputed

construction is outside the property of the petitioner beyond the road and then again at a distance of 6 meters thereafter.

6. Mr.Khandeparkar then referred to an order dated 19th September 2005 of a Division Bench of this Court passed in **Civil Application No.2244 of 2004 in PIL No.39 of 2003** and particularly Clause 13 thereof. It directs the respondents, which include the Mahabaleshwar Municipal Council, to forward to the High Court copies of all permissions and other supporting documents and plans in respect of applications for permissions or sanctions for any further development, construction and re-construction. In the present case, on the query from the Court, the particulars of the construction are enclosed to the reply filed by the respondents and in our view, nothing further is required in satisfaction of this clause. Under the interpretation of this clause, the High Court cannot be expected to take over the municipal functions. That will result into parallel control. We are basically concerned with protecting the environment and whether there is any violation thereof. All such orders are to be read in that context and cannot be permitted to be used by interested parties for their own benefits.

In the instant case, probably the interest of the petitioner is being affected as there will be some visitors across the road whom it may not like. It is not for the petitioner to choose as to who should visit the particular area.

7. Mr.Khandeparkar submitted that a few trees have been removed from this plot while constructing the building. Mr.Anturkar, learned Counsel appearing for respondent No.2, has denied the allegations on instructions of the Chief Officer, who is present in Court.

8. We have taken on record the Inspection Report given by the petitioner but it does not contradict in any way to the stand taken by the respondents.

9. In the circumstances, there is nothing to be examined any further. Petition is dismissed.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)